

PORTAGE CREEK MINING CO.

IBLA 83-187

Decided August 30, 1983

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, declaring mining claims null and void. F-63807 through F-63814.

Set aside and remanded.

1. Mining Claims: Lands Subject to--Mining Claims:
Relocation--Mining Claims: Withdrawn Land

Mining claims located on land which has been withdrawn from mineral location are properly declared null and void ab initio. However, where on appeal the mining claimant provides evidence which tends to show that some of the claims are amended locations of claims which predate the withdrawal, the case will be remanded to BLM for a determination of which, if any, of the claims are amended locations.

APPEARANCES: Richard R. Cole, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Portage Creek Mining Company appeals the October 22, 1982, decision of the Fairbanks District Office, Bureau of Land Management (BLM), which declared eight placer mining claims F-63807 through F-63814 null and void ab initio. 1/

1/ The record indicates that two individuals are associated with the Portage Creek Mining Company, John Bridgers and George Bailey. The mining claims, as referenced in the BLM decision, and as ascertainable from information available to BLM, are:

BLM SERIAL <u>NUMBER</u>	CLAIM <u>NAME</u>	DATE <u>POSTED</u>
F-63807	Broken Neck #1	September 1972
F-63808	Broken Neck #2	September 1972
F-63809	Broken Neck #3	September 1972
F-63810	Broken Neck #4	September 1972
F-63811	Broken Neck #5	September 1973
F-63812	Broken Neck #6	September 23, 1973
F-63813	Broken Neck #7	September 1973
F-63814	Broken Neck #8	September 1973

The October 22, 1982, decision noted that on October 19, 1979, location notices for the placer mining claims were filed with BLM as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR 3833. 2/ The notices state that the claims were located in September 1972 and September 1973. According to the location notices, the claims lie along the Broken Neck Creek within secs. 6 and 7, T. 1 N., R. 30 E., and sec. 31, T. 2 N., R. 30 E., Fairbanks meridian.

The decision further notes that on March 13, 1972, T. 1 N., R. 30 E., and T. 2 N., R. 30 E., Fairbanks meridian, among other areas, were withdrawn by Public Land Order (PLO) No. 5173 as regional deficiency land for Doyon, Limited, under the authority of section 11(a)(3) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610(a)(3) (1976). The withdrawal segregated the lands from all forms of appropriation under the public land laws, including the mining laws. 37 FR 5575 (Mar. 13, 1972) 3/

In declaring the mining claims to be null and void BLM stated that mining claims located on land withdrawn from mineral entry are null and void ab initio when, at the time of location, the lands were not open to mineral entry and that under such a situation there is no necessity for the Government to initiate formal contest proceedings.

In the statement of reasons for appeal appellant states that the location notices filed pursuant to FLPMA incorrectly list the date when the claims were staked and the date that the original notices of location were filed for location. Attached to the statement of reasons and listed as Exhibits A, B, and C are copies of notices of location for three placer claims, i.e., C & J Venture Nos. 1 through 3, which show these claims were located on March 28, 1968, and recorded with the State of Alaska on April 1, 1968. Also attached and listed as Exhibits D through H are copies of affidavits of annual labor referring variously to the "Portage Creek Mining Co. Claims Nos. 1 through 8" or the "Broken Neck #1-8" claims for the years 1973, 1978, 1979, 1981, and 1982. Appellant concludes that since the claims were staked and notices of location were recorded prior to the withdrawal of the lands, the claims were erroneously declared to be null and void.

Included in the case files are the "Mining Claim Location Notices" which were filed with BLM on October 19, 1979. These notices list the dates

2/ Section 314 of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, in addition to filing with BLM by Oct. 22, 1979, a copy of the official record of the notice of location, to file with BLM a copy of evidence of the assessment work performed on the claim or a notice of intention to hold the claims within 3 years after the date of the Act, i.e., on or before Oct. 22, 1979, and before Dec. 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976).

3/ The decision further states that both townships were selected by the State of Alaska on Feb. 19, 1982, and that these State selection applications further segregate the land from subsequent location under the mining laws.

of posting the notices as either September 1972 or September 1973. The notices are stamped as having been filed with the Fairbanks Recording District on April 4, 1973. ^{4/} Also included in the case files are "Affidavits of Annual Labor" for the Broken Neck Claims Nos. 1 through 8, which had been filed with BLM in 1979, 1980, 1981, and 1982 as required by FLPMA. ^{5/}

[1] To prevail in this case appellant must establish that it is the successor to an interest in mining claims located on the land before its withdrawal from mineral entry, as claims which are located on land which is withdrawn from mineral location are null and void ab initio. The essential question is whether the documents filed with BLM in 1979 were amended notices of location relating back to a 1968 location or whether they were new locations or relocations made after the land had been withdrawn. There is no requirement that an amended location or a relocation state that this is its purpose on its face. R. J. Wall, 68 IBLA 122 (1982); R. Gail Tibbetts, 43 IBLA 210, 228, 86 I.D. 538, 543 (1979).

An "amended location" of a claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals. Withdrawal of the land subsequent to the original location will thus not preclude the amended location, provided that the original claim was properly located. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971); Rhinehart Berg, 71 IBLA 131 (1983); R. Gail Tibbetts, supra.

The descriptions of the claims contained in the notices of location filed with BLM in 1979 are, in essence, drawings of the claims as they exist along the Broken Neck Creek, beginning with claim No. 1 at the confluence with Seventy Mile River and proceeding numerically northward along the creek. Each claim is specified as being 1,320 feet long, from north to south, and 660 feet wide. These claims are called the Broken Neck Nos. 1 through 8 claims and the names of the locators are: Portage Creek Mining Co., John Bridgers, George Bailey.

The three "Notices of Location of Placer Claim" filed with the statement of reasons each list the locator as Cynthia Bridgers, with the 1968 recordation in the Fairbanks Recording District being listed as requested

^{4/} Since all of the location notices bear Fairbanks Recording District date stamps of Apr. 4, 1973, it is obvious that the posting date of September 1973 shown on the notices for Broken Neck Nos. 5 through 8 is incorrect.

^{5/} Also included in the record in this case is a copy of a BLM, Alaska State Office, decision dated Sept. 16, 1976, declaring the Broken Neck Nos. 1 through 8 placer mining claims null and void for being located on withdrawn land. The decision notes that all the claims were recorded Apr. 4, 1973, in the Fairbanks recording district. The BLM decision is styled Portage Creek Mining Co., George Bailey, John Bridgers. The decision granted the right of appeal. The record contains no evidence of service of this decision or evidence of any appeal.

by John Bridgers. The claims, however, are designated as the C & J Venture Nos. 1 through 3. The claims are specified as being on Broken Neck Creek, just off the Seventy Mile River. Rather than with a drawing, however, the claims are described in writing using reference points not noted in the drawings found on the 1979 filings. As such, it is impossible for us to determine whether the claims described are the same as any of the claims for which notices of location had been filed with BLM in 1979. 6/

It is conceivable that the notices of location submitted with the statement of reasons are original location notices for three of the claims at issue. If so, the 1973 recordings with the State of Alaska, Fairbanks Recording District, could have served as amendments of the 1968 filings reflecting a change in claim names, from C & J Venture Nos. 1 through 3 to three claims within the Broken Neck series and reflective of a change in ownership.

Appellant's submissions on appeal, as to three of the claims, tends to support the position that three of the 1972 and/or 1973 locations were amendments of the 1968 locations. Since BLM has not had a chance to address the issue raised by the three location notices submitted on appeal, and it is not possible to resolve the issue based on the present record, we will remand the case to provide BLM the opportunity to determine which, if any, of the 1972 and/or 1973 locations are amended locations of the 1968 locations. In any event, appellant has provided evidence of location covering only three of the eight claims at issue.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Fairbanks District Office is set aside and the case file remanded to BLM for further consideration.

Bruce R. Harris
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Gail M. Frazier
Administrative Judge

6/ Although it may be that the C & J Venture claims No. 1 through 3 correspond with the Broken Neck # 1 through 3 claims, it is impossible definitely to ascertain this fact from the present record. As supplied with the statement of reasons the "Notice of Location of Placer Claim" for the C & J Ventures No. 1 claim is described in relation to the "Julia No. 1 claim." That claim is nowhere described. It is clear, however, that the C & J Venture No. 1 claim was located north of the Julia No. 1 claim.

